

Subsec. (a)(2)(A). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (c). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

§ 46104. Evidence

(a) GENERAL.—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration) may—

(1) subpoena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;

(2) administer oaths;

(3) examine witnesses; and

(4) receive evidence at a place in the United States the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration designates.

(b) COMPLIANCE WITH SUBPOENAS.—If a person disobeys a subpoena, the Secretary, the Administrator of the Transportation Security Administration, the Administrator of the Federal Aviation Administration, or a party to a proceeding before the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration may petition a court of the United States to enforce the subpoena. A judicial proceeding to enforce a subpoena under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

(c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a subpoena may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration or agreed on by the parties by written stipulation filed with the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fee and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration, an employee appointed under section 3105 of title 5 may conduct a hearing, subpoena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration designates. On request of a party, the Secretary, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration shall hear or receive argument.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1227; Pub. L. 107-71, title I, §140(b)(1), (2), (6), Nov. 19, 2001, 115 Stat. 641; Pub. L. 115-254, div. K, title I, §1991(f)(1)-(4), (6), Oct. 5, 2018, 132 Stat. 3642.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
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| 46104(a) | 49 App.:1354(c) (related to this chapter). 49 App.:1484(a) (related to member of the Board), (b) (1st sentence), (c) (1st sentence). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | Aug. 23, 1958, Pub. L. 85-726, §§313(c) (related to this Act), 1004(a)-(h), 72 Stat. 753, 792. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444. |
| 46104(b) | 49 App.:1354(c) (related to this chapter). 49 App.:1484(c) (last sentence), (d). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(c)(1) .. | 49 App.:1354(c) (related to this chapter). 49 App.:1484(e) (1st, last sentences). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(c)(2) .. | 49 App.:1354(c) (related to this chapter). 49 App.:1484(e) (2d sentence). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(c)(3) .. | 49 App.:1354(c) (related to this chapter). 49 App.:1484(e) (3d sentence). 49 App.:1655(c)(1). | |
| 46104(c)(4) .. | 49 App.:1354(c) (related to this chapter). 49 App.:1484(f). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(c)(5) .. | 49 App.:1354(c) (related to this chapter). 49 App.:1484(g). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(d) | 49 App.:1354(c) (related to this chapter). 49 App.:1484(b) (last sentence), (h). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |
| 46104(e) | 49 App.:1354(c) (related to this chapter). 49 App.:1484(a) (related to examiner). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). | |

In this section, the word “Administrator” in section 313(c) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 753) is retained on authority of 49:106(g).

Subsection (a)(1) is substituted for “sign and issue subpoenas”, “shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation”, and “The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing” in 49 App.:1484 for clarity and consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (b), the words “petition a court of the United States to enforce the subpoena” are substituted for “invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section” in 49 App.:1484(c) to eliminate unnecessary words. The words “to enforce

a subpoena under this section” are substituted for “in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question” in 49 App.:1484(d) to eliminate unnecessary words.

In subsection (c)(1), the words “pending before it, at any stage of such proceeding or investigation” in 49 App.:1484(e) are omitted as surplus. The words “a person to give” are substituted for “to be taken”, and the words “to produce records” are added, for clarity and consistency. The last sentence is substituted for 49 App.:1484(e) (last sentence) for clarity and consistency and to eliminate unnecessary words.

In subsection (c)(4), the words “shall be cautioned . . . to testify the whole truth, and shall be carefully examined” in 49 App.:1484(f) are omitted as surplus. The words “shall be under oath” are substituted for “shall be required to swear (or affirm, if he so requests)” for consistency and because of 1:1.

In subsection (d), the words “that the witness and individual would have been” are added for clarity and consistency in the revised title and with other titles of the Code. The words “fees, charges, or” and “on the subject” are omitted as surplus.

In subsection (e), the words “duly . . . for such purpose” are omitted as surplus. The words “employee appointed under section 3105 of title 5” are substituted for “examiner”, and the words “subpoena witnesses” are substituted for “sign and issue subpoenas”, for consistency in the revised title and with other titles of the Code. The words “In all cases heard by an examiner or a single member” are omitted as surplus.

AMENDMENTS

2018—Pub. L. 115-254, §1991(f)(6)(A), substituted “subpoena” for “subpena” wherever appearing.

Pub. L. 115-254, §1991(f)(4), substituted “Administrator of the Transportation Security Administration,” for “Under Secretary,” wherever appearing.

Pub. L. 115-254, §1991(f)(2), substituted “or Administrator of the Federal Aviation Administration” for “or Administrator” wherever appearing.

Subsec. (a). Pub. L. 115-254, §1991(f)(3), substituted “by the Administrator of the Federal Aviation Administration)” for “(by the Administrator)” in introductory provisions.

Pub. L. 115-254, §1991(f)(1), substituted “Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration” for “Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary” in introductory provisions.

Subsec. (b). Pub. L. 115-254, §1991(f)(6)(B), substituted “Subpoenas” for “Subpenas” in heading and “the Administrator of the Federal Aviation Administration, or” for “the Administrator, or” in text.

2001—Subsec. (a). Pub. L. 107-71, §140(b)(1), in introductory provisions inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or)”.

Subsec. (a)(4). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (b). Pub. L. 107-71, §140(b)(2), (6), inserted “the Under Secretary,” after “Secretary,” and substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsecs. (c) to (e). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator” wherever appearing.

§ 46105. Regulations and orders

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or